

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 220 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements ? YES

2. To be referred to the Reporter or not ? YES

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3. Whether Their Lordships wish to see the fair copy
of the judgement ? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder ?NO

5. Whether it is to be circulated to the Civil
Judge ? YES

STATE OF GUJARAT

Versus

LAKSHMAN MANGAJI MENA

Appearance:

MR UMESH TRIVEDI APP for Appellant-State

MR JB DASTOOR for Respondent No. 1

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 06/02/97

ORAL JUDGEMENT

This appeal by the State of Gujarat is directed
against the impugned judgment and order dated 27th

December, 1989, rendered in Criminal Case No. 1501 of 1989, passed by the learned Metropolitan Magistrate, Court No. 7, Ahmedabad, wherein the respondent Lakshman Mangaji Mena, on his pleading guilty came to be convicted for the alleged offences punishable under Sections 304-A, 279, 337, 338 of IPC read with Sec. 112 and 116 of Motor Vehicles Act, and sentenced till rising of Court and to pay fine of Rs. 1,000/= i.d to undergo s.i for 30 days for each offence.

2. To briefly narrate the prosecution case, the incident in question took place on 27th April, 1989 wherein Lakhsham Mangaji Mena while driving Luxury Bus No. GRM-2968 on Lambha-Bakaria road caused death of one Atulbhai and also injured four others who were travelling in auto-ricksaw bearing No. GRX-1565. The collision was due to rash and negligent driving on the part of respondent-accused is prima facie evident by the fact that after the collusion, the ricksaw was dragged upto 40 ft. which gives an idea about the speed, racklessness and the manner in which the accused was driving his luxury bus. On the basis of this allegations, after recording complaint and filing chargesheet, the accused came to be tried for the alleged offence punishable under Sections 279, 304 (a) wherein; as stated above in para-1 of this judgment, on the accused pleading guilty came to be convicted for the same and sentenced till rising of the Court and fine; giving rise to the present Criminal Appeal.

3. Heard Mr. Umesh Trivedi, learned APP and Mr. J.B Dastoor, learned advocate for the respondent-accused. Taking into consideration the fact that one person lost his life and other four got injured prima facie clearly goes to show that the vehicle was driven in the rash and negligent manner. Not only that but it also discloses the gravity and seriousness of the offence and despite this glaring fact, quite surprisingly, the learned Magistrate accepting the plea of guilty let-off the accused with a lighter sentence viz., till rising of the court and fine of Rs. 1000/- only !! It appears that had indeed the learned Magistrate given to understand the accused that having regard to the gravity and seriousness of the offence, he was likely to sentence him to some quite substantive sentence of imprisonment and/or fine, then in that case, this Court is quite sure the accused would not have pleaded guilty. Accordingly, this appears to be more or less a case of illicit plea-bargaining. In fact, it is hardly required to be

stated that whenever accused pleads guilty and the Court is inclined to give sentence till rising of the Court and some token fine, such a plea should not be accepted unless a purshis in writing from the accused is obtained in a specimen form prescribed in a judgment reported in XXVI (1996) Vol-I GLH 678. The learned Metropolitan Magistrate is bound to follow the directions given by this Court in the aforesaid judgment, even if for the alleged offence, there is no statutory sentence provided while recording the plea of guilty. The learned APP also submitted looking to the gravity of offence that but for "plea-bargaining" such a ridiculous light sentence of fine would not have been imposed !! In this view of the matter, this is a case which requires to be remanded as on the basis of illicit plea-bargaining neither a person can be let-off with a lighter sentence nor this Court can at his back send him to undergo substantive sentence of imprisonment and/or impose still more fine. In this view of the matter, the impugned judgment and order passed by the learned Magistrate deserves to be quashed and set-aside.

4. In the result, this matter is partly allowed. The impugned judgment and order of conviction and sentence is hereby quashed and set-aside. The fine; if paid, to be refunded. The case is remanded to the learned Metropolitan Magistrate to be tried afresh and decide the same on merits, in accordance with law, as expeditiously as possible; preferably on or before 31st December, 1997. It is further ordered that within fifteen days of the receipt of this order, the learned Magistrate shall issue summons to the said accused and concerned prosecution witnesses and the Police Inspector of the concerned Police Station in his turn shall see to it that they are duly served and witnesses are kept present before the Court. The learned Magistrate shall also see to it that witnesses present on the date is as far as possible examined.

5. During the course of hearing earlier by an order dated 28th June, 1996, this Court has called for information from the learned Chief Metropolitan Magistrate, Ahmedabad as to - (i) in how many cases Mr. Sarode, learned Magistrate has passed orders till rising of the Court and some fine; (ii) Criminal Case Nos. & Order - details; (iii) Nature of the offence; (iv) Under which Act, and whether pleaded guilty, what sentence imposed? Accordingly, Registrar is directed to scan through the report and on the basis of same, make a

detailed submission before the concerned learned Unit Judge of this Court for appropriate action; if any, on or before 31st December, 1997. This order be immediately placed before the Registrar for carrying-out directions.
